

ORIGINAL

COMMISSIONERS
MIKE GLEASON - Chairman
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KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION



0000076305

DATE: SEPTEMBER 20, 2007

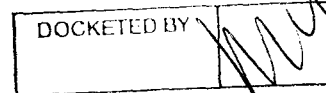
Arizona Corporation Commission

DOCKETED

DOCKET NO: S-20509A-07-0043

SEP 20 2007

TO ALL PARTIES:



Enclosed please find the recommendation of Administrative Law Judge Marc Stern. The recommendation has been filed in the form of an Order on:

PERRY AND TERRY PENNY, ET AL.
(NOTICE OF OPPORTUNITY)

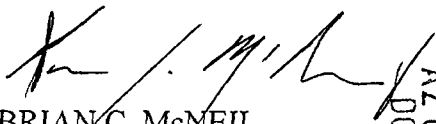
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

OCTOBER 1, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

OCTOBER 11, 2007

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

AZ CORP COMMISSION
DOCKET CONTROL

2007 SEP 20 P 1:08

RECEIVED

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 **IN THE MATTER OF:**

9 PERRY and TERRY PENNY, husband and wife,
10 Gilbert, Arizona

11 PENNY FINANCIAL, INC.,
12 a Michigan Corporation,
13 Gilbert, Arizona

14 PENNY PROPERTIES, INC.,
15 a Michigan Corporation,
16 Gilbert, Arizona

17 RYM TECHNOLOGY HOLDINGS, L.L.C.,
18 a Michigan limited liability company,
19 Birmingham, Michigan

20 FELIX L. DANIEL, SR. and JANE DOE DANIEL,
21 husband and wife,
22 Birmingham, Michigan

23 Respondents.

DOCKET NO. S-20509A-07-0043

DECISION NO. _____

ORDER

24 Open Meeting
25 October 11, 2007
26 Phoenix, Arizona

27 **BY THE COMMISSION:**

28 On January 22, 2007, the Securities Division ("Division") of the Arizona Corporation
Commission ("Commission") filed a Temporary Order to Cease and Desist ("T.O.") and a Notice of
Opportunity for Hearing ("Notice") against Perry and Terry Penny, husband and wife, Penny
Financial, Inc. ("PFI"), Penny Properties, Inc. ("PPI") (collectively "the Penny Respondents"), RYM
Technology Holdings, L.L.C., ("RYM") and Felix and Jane Doe Daniel, husband and wife,
(collectively "Respondents"), in which the Division alleged that the Respondents committed multiple

1 violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in
2 the form of notes and/or investment contracts. As a result of the T.O., the Respondents were
3 immediately ordered to cease and desist from violating the Act.

4 The Penny, PFI, PPI, RYM and Daniel Respondents were duly served copies of the Notice.

5 On February 13, 2007, the Penny, PFI and PPI Respondents filed a request for hearing and
6 answer. The RYM and Daniel Respondents did not request a hearing.

7 On February 20, 2007, by Procedural Order, a pre-hearing conference was scheduled on
8 March 22, 2007.

9 On March 22, 2007, the Division appeared through counsel and Mr. and Mrs. Penny appeared
10 on their own behalf. The Division requested that hearing be scheduled.

11 On March 23, 2007, by Procedural Order, a hearing was scheduled on May 8, 9, and 10, 2007.

12 On April 20, 2007, the Division filed a Motion to Continue ("Motion") the proceeding until
13 July 20, 2007, or later stating that settlement discussions were being held with the Penny, PFI and
14 PPI Respondents.

15 On April 23, 2007, by Procedural Order, the proceeding was continued to July 25, 2007, and
16 the exchange of copies of the proposed Exhibits and Witness Lists delayed until July 2, 2007.

17 Only June 27, 2007, the Division filed a Motion to Set Restitution and Administrative Penalty
18 Amount ("Motion for Penalty") against the RYM and Daniel Respondents.¹

19 On July 9, 2007, the Division filed a Motion to Extend Deadline for Submitting the Securities
20 Division's Witness and Exhibit Lists ("Extension Motion") pending approval of a proposed Consent
21 Order with respect to the Penny, PFI and PPI Respondents which was to be considered for approval
22 by the Commission at its July 12, 2007 Open Meeting.

23 On July 11, 2007, by Procedural Order, the Division's Extension Motion was granted.

24 On July 18, 2007, the Commission issued Decision No. 69705 which approved a Consent

25 ¹ The Division's Memorandum of Points and authority ("Memorandum") attached to its Motion for Penalty described the
26 manner of service made upon the RYM and Daniel Respondents. The Respondents were served in Michigan by certified
U.S. mail at their attorney's office pursuant to his instructions.

27 According to the affidavit of the Division's investigator attached to the Memorandum as Exhibit A, the T.O. and Notice
28 were mailed on January 23, 2007 and received at the attorney's office in Michigan on January 29, 2007. The T.O. and
Notice directed the RYM and Daniel Respondents to file a request for hearing in 20 days and to file an Answer within 30
days. Neither a request for a hearing nor an Answer were filed by the RYM and Daniel Respondents.

1 Order with the Pennys, PFI and PPI.

2 Subsequently, by Procedural Order, all hearing dates were vacated and the exchange of copies
3 of the Exhibit and Witness Lists was cancelled.

4 * * * * *

5 Having considered the entire record herein and being fully advised in the premises, the
6 Commission finds, concludes, and orders that:

7 **FINDINGS OF FACT**

8 1. RYM was organized as a Michigan limited liability company in approximately 2003.
9 The Resident Agent for RYM is Felix L. Daniel, Sr.

10 2. RYM was the issuer of the securities offered and sold through its agents/salespersons,
11 the Penny Respondents.

12 3. Felix L. Daniel, Sr., who resides in Michigan, was at all relevant times a
13 member/manager of RYM. Mr. Daniel was the vice president of sales and marketing of RYM, and
14 directed its agents/salespersons, the Penny Respondents.

15 4. Jane Doe Daniel, was at all relevant times the spouse of Respondent Felix L. Daniel,
16 Sr. Jane Doe Daniel is a fictitious name used to describe any person married to Felix L. Daniel, Sr.
17 Jane Doe Daniel is joined in this action under A.R.S. § 44-2031(C) solely for purposes of
18 determining the liability of the marital community.

19 5. At all relevant times, Mr. Daniel was acting for his own benefit, and for the benefit of
20 or in furtherance of the marital community.

21 6. RYM and the Daniel Respondents acted in concert to issue securities in the form of
22 notes and/or investment contracts through its agents/salespersons, the Penny Respondents. The
23 Penny Respondents offered and sold notes and/or investment contracts within or from the state of
24 Arizona through the use of the internet to one investor in Minnesota for \$41,000 which was paid to
25 RYM and \$3,280 in commissions which were paid to the Pennys. The notes and/or investment
26 contracts were neither registered with the Commission's Securities Division nor qualified for an
27 exemption from registration. Neither RYM nor the Daniel Respondents were registered dealers or
28 salesmen in Arizona.

1 7. RYM, PFI and PPI had websites ("Penny Websites") that offered the notes and/or
2 investment contracts to the general public on behalf of the Daniel Respondents. According to Terry
3 Penny, the Penny Websites were reviewed and approved by the Daniel Respondents. The Daniel
4 Respondents also provided some of the content for the Penny Websites explaining an investment
5 program termed the "5 Years to Freedom Program" ("5 Year Program").

6 8. Through the websites, the Daniel Respondents and its agents offered and sold the 5
7 Year Program. The 5 Year Program was a program that allowed investors the opportunity of owning
8 their property "free and clear in only 5 years."

9 9. According to the Penny Websites and representations to offerees and investors, to
10 become debt free in a short period of time, the investors invest 25 percent to 45 percent of the equity²
11 in their homes. The funds were then sent to the Penny Respondents in two checks; one check is two
12 percent of the mortgage amount payable to the Pennys for their commissions and the second check is
13 payable to RYM for the amount of the investment.

14 10. Once there was an agreement to invest, the investors were to receive investment
15 documentation from RYM that included a "Self-amortizing Conditional Payment Note" ("Note") and
16 a "Property Maintenance Terms and Conditions Agreement" ("Property Agreement"). The Note was
17 executed by Mr. Daniel on behalf of RYM, for the benefit of the investor. The Property Agreement
18 was between RYM as "Agent" for the investor who was the "Holder."

19 11. The offerees and investors were given offering documents printed from the Penny
20 Websites stating that their funds would be invested by a reputable investment firm, with a guaranteed
21 return on investment. The offering documents stated that the investment funds were to be placed "in
22 an account that generates large profits" and "there is no involvement with risky investments."

23 12. It was represented to offerees and investors that the investments made by the Daniel
24 Respondents to cover the costs of the 5 Year Program were invested in an account that generated
25 large profits with limited risks. Further, the offerees and investors were informed that the
26 investments that were made with their funds would be similar to those in which insurance companies

27 _____
28 ² The investor can have the equivalent amount of cash or the investors are encouraged to refinance their mortgages to pull out their equity to make the investment.

1 invested.

2 13. The offerees were told that the Daniel Respondents would double the investors'
3 money within six months by investing in condominium conversions, and if the Daniel Respondents
4 invested in the international markets, the offerees would earn a 15 to 20 percent return per week.

5 14. The Daniel Respondents, through the Penny Respondents, provided offering
6 documentation to offerees, either through the mails, telephonically or on the internet representing that
7 once the investment was made, the first six months of mortgage payments would be paid, then the
8 investors would receive half of their mortgage payments for the term of the Note (four, five or six
9 years). Upon maturity of the Note, the investors would receive a balloon payment that the investors
10 could use to pay off their mortgages. Offerees and investors were told that the cost of the 5 Year
11 Program, plus interest, is "fully guaranteed." In fact, the Daniel Respondents through the Penny
12 Respondents had represented to at least one offeree that his program was guaranteed and was low
13 risk. The Daniel Respondents, through the Penny Respondents, offered several other programs that
14 used the 5 Year Program as the basis of the investments which were known as the "Millionaire
15 Action Plan" and the "Real Estate Investor's Millionaire Action Plan".

16 15. In connection with the offer or sale of securities within or from Arizona, RYM and the
17 Daniel Respondents directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii)
18 made untrue statements of material fact or omitted to state material facts which were necessary in
19 order to make the statements made not misleading in light of the circumstances under which they
20 were made; or (iii) engaged in transactions, practices or courses of business which operated or would
21 operate as a fraud or deceit upon offerees and investors. The RYM and Daniel Respondents' conduct
22 includes, but is not limited to, the following:

- 23 • They failed to disclose the risk involved with the 5 Year Program and in fact
24 represented the program had little or no risk. In at least one circumstance an
25 investor did not receive the required payments for at least three months;
- 26 • They misrepresented to offerees that RYM would invest the investment funds
27 and the offerees would receive 15 to 20 percent return per week; and
- 28 • They misrepresented that the investment program was guaranteed when in fact

1 the note signed by the investor and RYM indicated that there was no guarantee
2 of performance.

3 16. Respondents RYM and Felix L. Daniel, Sr. made, participated in or induced the sale
4 and purchase of securities within the meaning of A.R.S. § 44-2003(A). Therefore, the RYM and the
5 Daniel Respondents are jointly and severally liable for the above violations of A.R.S. §§ 44-1991, 44-
6 1841 and 44-1842.

7 **CONCLUSIONS OF LAW**

8 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
9 Arizona Constitution, A.R.S. § 44-1801 et seq.

10 2. The investment in the form of notes and/or investment contracts offered and sold by
11 Respondents RYM and Mr. Daniel were securities within the meaning of A.R.S. § 44-1801(15), (21)
12 and (26).

13 3. The securities were neither registered nor exempt from registration, in violation of
14 A.R.S. § 44-1841.

15 4. Respondents RYM and Mr. Daniel sold unregistered securities within or from Arizona
16 in violation of A.R.S. § 44-1841.

17 5. Respondents RYM and Mr. Daniel acted as dealer and/or salesman within the meaning
18 of A.R.S. § 44-1801(9) and (22).

19 6. The actions and conduct of Respondents RYM and Mr. Daniel constitute the sale of
20 securities within the meaning of A.R.S. § 44-1801(21).

21 7. Respondents RYM and Mr. Daniel offered and sold securities within or from Arizona
22 without being registered as dealer and/or salesman in violation of A.R.S. § 44-1842.

23 8. Respondents RYM and Mr. Daniel committed fraud in the sale of unregistered
24 securities by: (i) employing a device, scheme or artifice to defraud; (ii) making untrue statements of
25 material fact or omitting to state material facts which were necessary in order to make the statements
26 made not misleading in light of the circumstances under which they were made; or (iii) engaging in
27 transactions, practices or courses of business which operated or would operate as a fraud or deceit.

28 9. The marital community of Respondent Jane Doe Daniel should be included in any

1 order of restitution and penalties ordered hereinafter.

2 10. Respondents RYM and Mr. Daniel have violated the Act and should cease and desist
3 pursuant to A.R.S. § 44-2032 from any future violations of A.R.S. §§ 44-1801, 44-1842, and 44-1991
4 and all other provisions of the Act.

5 11. The actions and conduct of Respondents RYM and Mr. Daniel constitute multiple
6 violations of the Act and are grounds for an order of restitution pursuant to A.R.S. § 44-2032 and for
7 an Order assessing administrative penalties pursuant to A.R.S. § 44-2036.

8 **ORDER**

9 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission
10 under A.R.S. § 44-2032, Respondents RYM Technology Holdings, L.L.C. and Felix L. Daniel, Sr.
11 shall cease and desist from their actions described hereinabove in violation of A.R.S. §§ 44-1841, 44-
12 1842 and 44 -1991.

13 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
14 A.R.S. § 44-2036 that RYM Technology Holdings, L.L.C and Felix L. Daniel, Sr. and Jane Doe
15 Daniel, to the extent allowable pursuant to A.R.S. § 25-215, jointly and severally, shall pay an
16 administrative penalty in the amount of Twenty-Five Thousand Dollars (\$25,000). Payment shall be
17 made in full on the date of this Order to the "State of Arizona." Any amount outstanding shall accrue
18 interest at the rate of 10 percent per annum from the date of this Order until paid in full. The
19 payment obligations for these administrative penalties shall be subordinate to any restitution
20 obligations ordered herein and shall become immediately due and payable only after restitution
21 payments have been paid in full or upon Respondents' default with respect of Respondents'
22 restitution obligations.

23 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
24 A.R.S. § 44-2036, that Respondents RYM Technology Holdings, L.L.C. and Mr. Felix Daniel, Sr.
25 and Mrs. Jane Doe Daniel, to the extent allowable pursuant to A.R.S. § 25-215, jointly and severally,
26 shall pay the administrative penalty ordered hereinabove by presenting it to the Arizona Corporation
27 Commission for deposit in the general fund for the State of Arizona.

IT IS FURTHER ORDERED that if Respondents RYM Technology Holdings, L.L.C. and Mr. Felix Daniel, Sr. and Mrs. Jane Doe Daniel fail to pay the administrative penalty ordered hereinabove, any outstanding balance plus interest at the maximum lawful amount may be deemed in default and shall be immediately due and payable, without further notice.

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IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, that Respondents RYM Technology Holdings, L.L.C. and Mr. Felix Daniel, Sr. and Mrs. Jane Doe Daniel, to the extent allowable pursuant to A.R.S. § 25-215, shall jointly and severally be liable to pay restitution to the Commission in the amount of Forty-Four Thousand Two Hundred Eighty Dollars (\$44,280). Any amount outstanding shall accrue interest at the rate of 10 percent per annum from the date of this Order until paid in full. The restitution amount paid subject to A.A.C. R-14-308 will be offset by any payments made to the investor from any prior payment or payments to the Commission made by any other Respondent. Payment shall be made by check or money order payable to the "State of Arizona" and shall be placed in an interest-bearing account maintained and controlled by the Commission until distributions are made. Any funds that the Commission determines it is unable to, or cannot feasibly, disburse shall be transferred to the general fund of the State of Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2007.

DEAN S. MILLER
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR: PERRY AND TERRY PENNY, ET AL.

2 DOCKET NO. S-20509A-07-0043

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4 RYM-TECH SERVICES, INC.
330 East Maple, #408
5 Birmingham, MI 48009

6 Felix L. Daniel Sr.
6518 Enclave Drive
7 Clarkston, MI 48348-4858

8 Matt Neubert, Director
9 Securities Division
ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, AZ 85007

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